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Re: Proposed Amendments to Nevada Gaming Control Board Regulation 5.225

Dear Ms. Carleton:

In connection with Sightline Payments' proposed amendments to Nevada Gaming Control Board Regulation 5.225 (the "Sightline Proposal"), you have asked us to provide support for Sightline's position that (i) casinos may remotely examine a document for identity verification ("IDV") purposes under federal law in the context of in-person gaming; and (ii) the term "online gaming" as used in the Financial Crimes Enforcement Network ("FinCEN") guidance dated October 19, 2021 (the "Guidance"), should include gaming conducted through a mobile device application. We present such support below.

I. A Casino's Remote Examination of a Document for In-Person Gaming Is Consistent with Federal Law.

FinCEN regulations require casinos to "examine" (quotations added) a document to verify the name and address of their customers. *See* 31 C.F.R. §§ 1010.312; 1021.410(a) (" . . . verification shall be made by examination of a document."). Casinos must use a document for IDV purposes as follows:

Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for non-depositors (e.g., a driver's license or credit card).

Id. at § 1010.312.



FinCEN regulations and guidance applicable to casinos do not clarify whether the “examination of a document” must be completed in person. *See, e.g.,* 31 C.F.R. §§ 1021.100 *et seq.*; Internal Revenue Manual §§ 4.26.5 *et seq.*; FinCEN Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements.¹ As you are aware, the Guidance excepts casinos from the above requirement in the context of online gaming (i.e., casinos have the option to use only non-documentary methods in the context of online gaming). The Guidance implies that remote examination of a document is acceptable in the online gaming context, but does not prohibit or otherwise address remote examination of a document for in-person gaming. *See generally* FIN-2021-R001. Accordingly, **nothing in FinCEN regulations or guidance applicable to casinos prohibit casinos from remotely examining a document for in-person gaming** (e.g., verifying identities by using a picture of a driver’s license submitted through the casino’s website or mobile application prior to the customer’s visit to the casino). The proposed amendment of Nevada Gaming Regulation 5.225 to allow for the remote confirmation of the identity of a patron by providing a government issued picture identification credential coupled with an identity verification method that enables the casino to form a reasonable belief that it knows the true identity of the patron is consistent with FinCEN regulations and the Guidance.

Furthermore, several states permit casinos to remotely examine a document for in-person gaming, and FinCEN has not objected to any such practice in those states.² For instance, the Colorado Department of Revenue notified casinos in 2019 of the Colorado governor’s policy statement permitting the use of digital personal identification technology and the potential implications of this policy statement for gaming (including in-person gaming). *See* Colorado Industry-Wide Gaming Bulletin 57.³ In fact, this policy statement provides that “merchants may start accepting Colorado Digital ID for proof of identity and age within Colorado on October 30, 2019” and “[t]he Colorado Digital ID . . . is valid for acceptance anywhere age or identity verification is required.” *See id.* at 2. FinCEN has not stated that a casino’s examination of a Colorado Digital ID for IDV purposes does not constitute the “examination of a document” under applicable FinCEN regulations. **Therefore, remotely examining a document for IDV purposes for in-person gaming should be consistent with FinCEN regulations.**

Additionally, FinCEN regulations require casinos to maintain a record of each customer’s name, permanent address, and social security number, and permit digital storage of such information. *See* 31 C.F.R. § 1021.410(a), (c)(1). The Nevada Gaming Regulations similarly require the maintenance of information used to establish a wagering account and allow for digital storage of

¹ Available at https://www.irs.gov/irm/part4/irm_04-026-005; <https://www.fincen.gov/frequently-asked-questions-casino-recordkeeping-reporting-and-compliance-program-requirements-0>.

² Nevada Eyes Permitting Remote Identity Verification for Cashless Payment Accounts, CDC Gaming Reports, Inc., available at <https://www.cdcgamingreports.com/nevada-considers-permitting-remote-identity-verification-for-cashless-payment-accounts/>.

³ Available at https://sbg.colorado.gov/sites/sbg/files/Gaming%20Industry%20Bulletin%2057_CO%20Digital%20ID%20Gov%20EO%20Oct%2031.pdf



that information.⁴ Given that FinCEN permits digital storage of the information a casino collects through the casino's required "examination of a document," coupled with the fact that FinCEN regulations and guidance do not prohibit remote examination of customers' documents in connection with in-person gaming, it follows that the collection and examination of such information may occur through digital means (i.e., remote examination of a document). Collecting and examining such information by instructing customers to upload a picture of a government issued picture identification credential (such as a driver's license) through the casino's website or mobile application is entirely consistent with FinCEN regulations and its Guidance.

Federal agencies have remotely examined financial institutions⁵) documents during and before the pandemic, and some agencies are considering continuing such remote examination practices. For example, the Federal Deposit Insurance Corporation ("FDIC") issued a Notice and Request for Information ("NRI") in August 2021 soliciting feedback from banks on the FDIC's remote examination practices during the pandemic. *See* 86 Fed. Reg. 44,364. The NRI is intended to help the FDIC develop its long-term remote examination practices.⁶ Given that federal regulators have relied and will continue to rely on remotely examining financial institutions' documents to determine compliance with federal law, casinos should be able to remotely examine customers' documents for compliance with federal law, especially considering that FinCEN regulations and guidance do not prohibit such remote examination of customers' documents for in-person gaming.

II. Online Gaming under the FinCEN Guidance Should Include Gaming Conducted through a Mobile Device Application.

As discussed above, the Guidance allows casinos to employ non-documentary means to verify customers' identities in the context of "online gaming"⁷ as part of the casino's risk-based customer identification program. The Guidance states that online gaming involves remote interaction with customers:

The gaming industry has since evolved, with many casinos now offering new types of gaming, such as *online sports wagering and online casino gambling, that involve remote interaction with customers*.

FIN-2021-R001 at 2 (emphasis added).

Besides this reference noted above, the FinCEN regulations or guidance do not clarify the meaning of "online gaming," "online sports wagering," or "online casino gambling." However, the Unlawful Internet Gambling Enforcement Act of 2006 prohibits businesses from knowingly

⁴ See Nevada Gaming Regulations 5.225(17) and 5A.190(7).

⁵ A casino is a "financial institution" under FinCEN regulations – *see* 31 C.F.R. § 1010.100(t).

⁶ See <https://www.americanbanker.com/news/fdic-seeks-industry-feedback-on-the-future-of-remote-exams>.

⁷ FinCEN also uses the terms "online sports wagering" and "online casino gambling" in its Guidance to discuss the scope of its usage and the necessity of providing this guidance to the casino industry.



accepting payments in connection with the participation of another person in “unlawful internet gambling” defined as:

[T]o place, receive, or otherwise knowingly transmit a bet or wager by any means which *involves the use, at least in part, of the internet* where such bet or wager is unlawful under any applicable Federal or State law . . .

31 U.S.C. § 5362(10) (emphasis added).

Further, the U.S. General Accountability Office released a report in 2002 discussing issues regarding internet gambling and stated “[i]nternet gambling can take place on any electronic device that offers internet access anywhere on the globe.”⁸ This usage supports the proposition that “online” gaming is not limited to Internet gaming only.

A casino enabling gambling through a mobile application involves “remote interaction with customers” and “the use, at least in part, of the internet” and requires an “electronic device that offers internet access” to operate (i.e., a mobile device). **Therefore, mobile gaming should constitute “online gaming” under the Guidance and there is nothing in FinCEN’s regulations or the Guidance to suggest otherwise.** Accordingly, pursuant to the Guidance, casinos should be able to rely on non-documentary means to verify a customer’s identity in connection with mobile gaming.

Very truly yours,

Orrick, Herrington & Sutcliffe, LLP

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By: _____

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⁸ See Internet Gambling: An Overview of the Issues, General Accountability Office, available at <https://www.gao.gov/assets/gao-03-89.pdf>.